

7/16/75

Mr. Tom Susman, Counsel
Administrative Practices Subcommittee
Senate Office Bldg.,
Washington, D.C.

Dear Tom,

After the first calendar call in C.A. 226-75 that I was able to attend I believe I wrote and told you that the judge had determined to rewrite the law and had signalled to the U.S. Attorney how to go about it.

I was right. Only not right enough. He went farther.

Whatever else he intended I don't know because the notice on the outside of the court read "Motion to Dismiss and Protective Order." Suggestive of Danaher's idea that I should be forever foreclosed from investigating.

Perhaps it was our vigor that decided him against whatever kind of "protective order" he had in mind. Ryan told us he had offered none.

There were other and prior motions before Pratt. He did not consider them.

The effect of his ruling is worse than "substantial" compliance being full compliance. He actually ruled that no compliance is full compliance. He also ruled that compliance lies in giving an applicant what he says he doesn't want while refusing to give him what he says he does want.

When we confronted him with proof that the government knew and had what it was still withholding he shifted from his strategy, which had been to ignore everything, to try to argue that it was not included in the complaint. Now this required him to have some detailed knowledge. I had just given Jim Lesar the proof that morning, just before court opened. I had not had time to explain it to him. However, this was proof that there had been neutron activation testing that had been withheld in any form, either the results we asked for or the raw material they gave me instead. When Jim showed it to him in court Jim did not explain what the test was. The judge's response was to argue that we had not sued for any NAAs!

His response to our repeated proving of false swearing was naughty-naughty. Nice people do not make and prove such charges. Besides, you might get hurt outside of court. Jim ended that by saying we were prepared to as soon as we left the court.

Once what the judge had decided to do was clear so was my course and Jim agreed. It was to make the strongest possible record for the court of appeals. Lawyers have come to accept false swearing by officials, undeferred, it seems by Watergate. We didn't have time to spell out all the false swearing but it is close to all in the record and it is irrefutable if reason prevails and people think and act on evidence. The materiality is, I think, beyond question.

What any court will do with a record I don't know. All I can do is make that record in whatever way seems to be available to me. If it serves only historical purposes then I'll serve history only. I think more is served, regardless of decisions.

The government was really uptight about this one.

The judge went farther in the hearing yesterday and heaped sympathy on the poor DJ which is so overworked by FOIA requests. It was relevant to nothing before him once he ignored the truth Jim gave him: that we had gotten no single paper we sued for and that the government had spent much time and money copying what I specifically said I did not want and what is specifically not in the complaint. I note this because there will come the time when bitter executive-branch tears will be shed upon the Congress. Among the unquestionable parts of this case's record is that there never was any need for a single paper to be filed in a single court. The government made all this work for itself, regardless of whether or not it complied.

For any Kennedy close attention to the record in this case serves other purposes. If you ever want explanations. let me know.

Sincerely,
Harold Weisberg